

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.121 OF 2006
WITH
CIVIL APPLICATION NO.144 OF 2006

Ramesh Chandu Poojary. ..Appellant.

V/s.

Municipal Corporation of Gr.Mumbai &
Anr. ..Respondents.

Mr.R.A.Thorat with Ashok Mishra for appellant.

Mrs. Geeta Joglekar for Respondent No.1 BMC.

Mr. N.P.Singh for respondent No.2.

CORAM: A.M.KHANWILKAR, J

DATE : FEBRUARY 14, 2006.

P.C. :

1. Heard counsel for the parties.

2. Admit.

3. Mrs.Geeta Joglekar waives notice for
repondent-BMC. Mr.N.P.Singh waives notice for
respondent No.2.

4. As short question is involved, appeal is
taken up for hearing forthwith by consent.

5. This appeal from order takes exception to the

order passed by the City Civil Court, Bombay dated February 1, 2006 in Notice of Motion No.418 of 2006 in L.C.Suit No.482 of 2006. By this order the trial Court has rejected the prayer for ad-interim relief during the pendency of the Notice of Motion. Indeed, the trial Court has recorded the reasons for doing so. Counsel for the appellant however, contends that the entire matter can be resolved including the suit, if the appellant was given one opportunity to approach the concerned Assistant Municipal Commissioner, G/South Ward who is authorised to decide representation in response to notice under section 351 of the Act.

6. Learned counsel for the appellant fairly accepts that no grievance has been made in the plaint nor any assertion made that the plaintiff was unable to make representation for the reasons beyond his control. In fact, no case in that behalf is made out in the plaint as filed. Even so, the counsel for the appellant contends that in the interest of justice and to resolve entire controversy, so as to observe the fairness of procedure, appellant be given one opportunity to approach the concerned authority to consider the representation in response to the notice under section 351 of the Act.

7. Counsel for the respondent No.2 has no objection if the appellant is allowed to adopt such course. Counsel for the respondent No.1 Corporation however, contends that appellant was given opportunity to file representation against the notice under section 351 of the Act. The appellant however, failed to do so, which resulted in passing of the order by the Assistant Municipal Commissioner on 6th January, 2006. The order as passed by the said authority records that the appellant has not submitted any satisfactory proof or documentary evidence to prove the existence of the suit structure prior to the datum line.

8. Indeed, the counsel for the Corporation may be right in submitting that the appellant failed to avail of the statutory remedy and no further indulgence be shown. However, as the entire controversy can be put at rest and the full-fledged trial can be avoided if the concerned authority was to consider representation and appellant was to produce relevant documents to support his case about the existence of his structure prior to the datum line or about authorised nature of structure in question. Therefore, in the interest of justice, the

request made on behalf of the appellant is acceded to by this order.

9. Accordingly, this appeal is disposed of with the following directions with no order as to costs.

(i) The appellant shall make representation to the concerned Assistant Municipal Commissioner in response to the suit notice dated 24th December, 2005 and place on record relevant documents with regard to the suit structure, as may be advised, within one week from today, without waiting for copy of this order.

(ii) If such representation is filed, the Assistant Municipal Commissioner is directed to consider the said representation and the supporting documents presented by the appellant on its own merits in accordance with the law, notwithstanding his order dated 15th January, 2006.

(iii) The concerned authority shall pass final order on the said representation within two weeks from the date of presentation. The

appellant shall extend necessary corporation to the said authority for early disposal of the said representation.

(iv) It will be open to the respondent No.2 to participate in the said proceedings in accordance with the law, which question is left open to be considered by the appropriate authority.

10. The appellant through his counsel assures that in view of this arrangement, the appellant will withdraw the suit instituted before the trial court and challenge the order to be passed by the Assistant Municipal Commissioner, if the same is adverse to the appellant by taking recourse to the fresh proceedings, as may be permissible by law. The trial court may pass formal order on such request being made by the appellant within two weeks from today.

11. Till the representation is finally disposed of by the concerned authorities, parties are directed to maintain status quo with regard to the suit structure. It is made clear that if the Appellant fails to the representation before the concerned officer as referred to above, it will be open to the

officials of the Corporation to proceed against the
suit structure in accordance with Law.